

Before the  
Federal Communications Commission  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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Federal-State Joint Board on )  
Universal Service )  
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CC Docket No. 96-45

To the Commission:

**COMMENTS OF THE COUNCIL OF THE GREAT CITY SCHOOLS**

The Council of the Great City Schools, the coalition of over 50 of the nation's largest central city school districts, requests the consideration of the following comments regarding the Commission's April 30, 2001 Further Notice of Proposed Rulemaking (Notice) on: (1) a proposed rule change for Year Four, to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections the previous year; and (2) a proposed modification to the rule to provide additional time for recipients to implement contracts or agreements with service providers for non-recurring services (FCC 01-143).

**SUMMARY**

- (1) The Council of the Great City Schools opposes the proposed rule change regarding funding priority for internal connections for Year Four, as presented in the Notice. The retrospective revision of applications received for Year Four, as suggested by the Notice, is an arbitrary decision that is harmful to faithful applicants. The complexity involved in the interpretation and implementation of a priority rule change requires more extensive consideration and discussion than suggested by the current Notice, and may prove difficult to perform before the start of the Year Four funding cycle. Finally, with estimates and demand for E-Rate services expanding yearly, the FCC's should examine an increase in the spending cap for universal service, not a reduction in services for those most eligible. Therefore, it is the opinion of the Council of the Great City Schools that if any change in the priority rule is made, the change must be enacted no earlier than the start of Year Five.
- (2) The Council of the Great City Schools supports the decision to extend the deadline for Year Three non-recurring services to September 30, 2001, as well as the proposed modification for a permanent deadline for such services to September 30 following the close of the funding year.

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## COMMENTS OF THE COUNCIL OF THE GREAT CITY SCHOOLS

The Council of the Great City Schools, the coalition of over 50 of the nation's largest central city school districts, is pleased to submit comments pursuant to the Commission's April 30, 2001 Further Notice of Proposed Rulemaking (Notice). The E-Rate program has no greater advocate than the large city school systems that enroll the highest number of disadvantaged children, employ the largest number of teachers, and occupy the greatest number of school buildings. Specifically, the Council of the Great City Schools represents approximately 30% of the nation's Hispanic students, 35% of the nation's African American students, and 25% of the nation's children living in poverty. The value of the E-Rate is immeasurable to these students and the inner-city; prior to the E-Rate, shallow resources and a historically deep digital divide often left school districts with no chance to provide the technology that has enhanced teaching and learning elsewhere.

*PROPOSED: A rule change for Year Four, to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections the previous year.*

1. THE RETROACTIVE ENACTMENT OF A NEW RULE FOR DISTRIBUTING YEAR FOUR REIMBURSEMENTS IS HARMFUL TO DEPENDABLE APPLICANTS AND UNDERMINES THE INTENT OF THE PROGRAM.

Since the inception of the E-Rate, schools have worked in cooperation and complied with the FCC and the SLD to ensure the best administration of the program, despite a cumbersome application process. However, the application process requires precision and long-term technology planning, and has brought impressive benefits to needy schools and students.

Applicants used their experience with the E-Rate program, its past funding patterns and demand estimates, to complete bids and submit Year Four Form 471 to the SLD. Form 471, which was due no later than January 18, 2001, provides information regarding the applicant's selected vendors and the desired services. The Council suggests that issuing a new rule for a Year Four application process that ended over four months ago and began almost seven months ago disregards the effort and expense of schools and their contractors. Year Four applicants consulted the applicable rules and began to consider their possible discounts at least a year ago, and in the case of big city school districts with large numbers of buildings, classrooms, as well as long-term technology plans, likely earlier than that.

If the rule is enacted and made applicable for Year Four, then the FCC will require that the SLD to remove completed and legitimate applications from consideration due to a requirement imposed retroactively. Also, the FCC contends that the retroactive rule will correct the injustice of denying discounts for internal connections to schools that are

“economically disadvantaged, albeit not to the same degree,” as the highest poverty schools. Large urban districts are comprised of schools at all levels of poverty, and certainly include those that are “economically disadvantaged”, and only eligible for a discount below 90%. These schools and their districts are familiar with the operation of the E-Rate, the denial of funding in the past, and knew that only a slim chance existed for a successful application under the current rule. Hence, these school districts put their efforts into applying for their highest poverty schools, instead of their economically disadvantaged schools. If the new rule is imposed retroactively to the start of Year Four, the SLD should, at a minimum, invite new Year Four applications from entities with these economically disadvantaged schools that are likely to receive a reimbursement under the new rule, but did not originally apply.

If the new rule is imposed retroactively on Year Four, not only will funds not reach the economically disadvantaged schools and libraries that were dissuaded from applying due to past funding patterns, but it will also unfairly deny reimbursements to the poorest schools that the E-Rate is meant to help. By retroactively enacting a new rule and changing an essentially completed process, the FCC is disregarding not only the applicants that have applied for Year Four, but also the applicants that have learned the history and administration of the program, and have worked to ensure its efficiency.

2. THE INTERPRETATION AND IMPLEMENTATION OF THE PROPOSED RULE WITHOUT THE PROPER CONSIDERATION WILL INADVERTENTLY DENY FUNDING FOR POOR SCHOOLS AND INNER-CITY DISTRICTS, IN ADDITION TO THE YEAR THREE RECIPIENTS OF INTERNAL CONNECTIONS IT INTENDS TO DENY.

The proposed rule would deny Year Four funding for internal connections to any applicant that qualified for such support in Year Three, which SLD was able to fund down to the 82% level. In addition, however, the rule could conceivably deny internal connections funding to all of the schools and libraries in districts that apparently qualified for Year 3 internal connections support on a shared basis. It is a common and encouraged practice for districts to submit an E-Rate request to the SLD with a large group, or sometimes all, of their schools within a single discount band on one application. The specific services that each site receives can not be determined from the application, but are listed in further detail in the technology work plan and vendor invoices. Some sites do not receive any service, but are still listed on the application. Because a district applied on behalf of a group of schools, and received funding in Year Three, all of the entities listed on those discount worksheets, even those that did not receive services, would be deemed ineligible for internal connections funding in Year Four. Denying funding to schools and libraries as a result of an administrative loophole is an unintended effect of the proposed rule that the FCC must recognize.

Another example for the Commission to consider regards the issue of maintenance and its classification as an internal connection by the E-Rate program. The recurring maintenance on telecommunications equipment is an essential component of local

technology plans, and is vital to protect and extend the investment made by the FCC and local school districts. Many schools did not receive or apply for any installation work in Year Three, but the proposed rule will disqualify them from Year Four funding because of minimal maintenance work. Technology plans in the large city school districts require multiple phases and years to complete installations, yet maintenance for any completed work must be done on a regular basis. If the rule is imposed as is, schools will have to consider removing maintenance in alternative years to ensure eligibility for other internal connections. Denying funding to schools and libraries as a result of their responsible maintenance efforts is also an unintended effect of the proposed rule that the FCC must address.

These examples demonstrate two potentially disastrous, and unintended, effects of the proposed rule, which are certainly out of step with the Commission's intention in considering a change. These issues, along with others which are certain to arise, should be considered and remedied by the FCC before the rule change is made. Also, in its response to the FCC's request for information about the impact of the proposed rule change, the SLD highlighted its own limitation to project the outcome of the new rule. The SLD response was released a mere five days ago (May 18, 2001), and cited obstacles such as incomplete data entry, extrapolation of information from applications that have not yet been entered, the amount of approvable applications that emerge from the Program Integrity Assurance (PIA) process, and the continuation of funding commitments for Year Three which could further disqualify applicants from Year Four funds. The reply comments for this Notice are due to the FCC no later than May 30, 2001, and leave some twenty-two (22) business days to resolve all matters before the start of the Year Four funding cycle on July 1, 2001. It is difficult to imagine that all of the aforementioned obstacles will be overcome in that time, or that all of the unintended negative effects of the rule will be remedied by July 1<sup>st</sup>. What is likely to result is another funding year in which commitments to school districts are delayed, and vendors and projects are jeopardized due to the lag. Finally, questions about the program's effectiveness, quelled by recent success, will once again become public debate.

3. IF THE FCC DECIDES THAT A NEW PRIORITY RULE MUST BE ESTABLISHED, THE CHANGE MUST GO INTO EFFECT NO EARLIER THAN THE START OF YEAR FIVE.

One of the first things a district does before beginning the long E-Rate application process that precedes funding commitments is consult the applicable rules and eligibility requirements for the program. After assessing their needs and the viability of receiving funds from the E-Rate, the district makes a decision regarding its application. It is intrinsically unfair for the FCC to change the rules of the game, not only after the match has been played, but also before the "winners" are announced.

With these comments, the Council has stated its specific concerns with the decision to change the funding priority rules, but appreciates the Commission's desire to provide universal service discounts to eligible applicants within a range of high-poverty areas. If

the rule change is made, ideally it should not be made effective until the start of Year Six. The essence of the rule states that funding in a preceding year is a factor in approving the following year's application. Year Four applications have already been submitted, and implementing the rule in Year Five would still deny funding to entities receiving funding in Year Four, regardless of the size of their reimbursement and the fact that they were unaware of such a penalty. Implementing the rule for Year Six provides districts with enough time to adjust their technology plan to work with the new requirement, and does not penalize applicants for reasons beyond their control.

At the very least, however, this change must not be made until the start of Year Five. Any earlier change disrupts the current year's application process, questions the validity of all awards, and raises doubts about the program's effectiveness.

4. AN INCREASE IN THE AMOUNT OF UNIVERSAL SERVICE FUNDS AVAILABLE FOR THE E-RATE IS A MORE APPROPRIATE RESPONSE TO HIGH DEMAND THAN THE PROPOSED ARTIFICIAL REDUCTION IN REQUESTS.

According to the Notice, the proposed rule change was the result of high demand, and the fact that "...there will not be enough funding for the neediest applicants, who are eligible for a 90 percent discount." However, the Council believes that a more obvious solution than a rule change addresses this problem, and recommends that the FCC consider raising the level of the E-Rate's \$2.25 billion cap as its preferable remedy. Currently, the universal service fee charged to consumers by telecommunications companies yields an annual amount greater than the current cap of \$2.25 billion. Yet despite an annual demand in excess of the current cap, the FCC returns funds in excess of \$2.25 billion to the companies, and the amount of funds available for universal service remains at its current level. The current cap is actually below the original recommendation of the Federal-State Joint Board on Universal Service, and has not met the needs of schools and libraries.

Altering the priority criteria to reduce the amount of requests for internal connections from the neediest applicants creates an artificial, but not actual, reduction in requests. The proposed rule ignores the fact that regardless of prior reimbursement, a request from the highest level of poverty demonstrates that the need for services still exists. The new rule also will not ensure that those schools and libraries eligible for the greatest discounts receive assistance, which is the program's intent. Increasing the cap, however, would allow the FCC to maintain the integrity of its current applications and existing reimbursement mechanism, while providing the SLD with enough funding for all of the neediest applicants.

*PROPOSED: A modification to the rule to provide additional time for recipients to implement contracts or agreements with service providers for non-recurring services.*

The Council of the Great City Schools supports the decision to extend the deadline for Year Three non-recurring services to September 30, 2001, as well as the proposed modification for a permanent deadline for such services to September 30 following the close of the funding year.

Urban school districts submit the largest applications to the SLD, and due to the complexity of their request, are often among the last to receive funding commitments. The size and scope of projects in the largest school districts require sufficient duration for completion, including the important summer months when few students are in the schools. This year's deadline extension will help urban school districts complete projects from Year Three, and the permanent extension will assist them in their continual efforts to close the digital divide.

### **CONCLUSION**

The April 30, 2001 Notice proposed two new rules for the E-Rate. Regarding an extension of the work deadline, which we support, the FCC stated, "These minor administrative modifications should provide applicants with greater flexibility without compromising program integrity." There is no doubt that the same goal should apply to the proposed funding priority rule as well. The retroactive enactment of a new rule for the completed E-Rate application process undermines the program's focus on the poorest schools, and is not supportable. If the FCC proposes a new funding priority rule, the Council of the Great City Schools believes the Commission must implement it in such a way that minimizes the disruption of program service, without subverting the original intent of the highly successful E-Rate program.

Respectfully Submitted,



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Council of the Great City Schools

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